

JOHN SCHANDELMEIER

IBLA 81-294

Decided July 28, 1981

Appeal from a decision of the Glennallen Resource Area Manager and the Acting Anchorage District Manager, Bureau of Land Management, designating the Tangle Lakes Archaeological District as an area with a limited season of use for off-road vehicles. Interim Designation Order AK-010-8002.

Affirmed.

1. Administrative Procedure: Administrative Review -- Federal Land Policy and Management Act of 1976: Land Use Planning -- Public Lands: Administration

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

APPEARANCES: John Schandelmeier, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John Schandelmeier appeals from a decision of the Glennallen Resource Area Manager and the Acting Anchorage District Manager, Bureau of Land Management (BLM), designating the Tangle Lakes Archaeological District as an area with a limited season of use for off-road

vehicles (ORV). BLM's decision was published on September 8, 1980, at 45 FR 59208. A right to appeal to this Board was provided in BLM's published decision.

The action by BLM in designating the Tangle Lakes Archaeological District as a "limited" area was taken in accordance with Exec. Order Nos. 11644, 3 CFR 666 (1971-1975 Compilation), and 11989, 3 CFR 120 (1978), and in accordance with the regulations at 43 CFR Part 8340. Regulation 43 CFR 8342.1 requires BLM to take the following steps for all public lands:

§ 8342.1 Designation criteria.

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

* * * * *

BLM's designation of the Tangle Lakes Archaeological District as "limited" was made following public participation at three open meetings and BLM's receipt of written comments. Because the Tangle Lakes Archaeological District is included in the National Register of Historic Places, BLM was required by section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f (1976), to afford the

Advisory Council on Historic Preservation an opportunity to comment on proposed designations. 1/ BLM's notice of September 8, 1980, asserts compliance with this requirement.

Among the comments received by BLM were two letters from appellant opposing restrictions on ORV use in the district. The file reveals that BLM responded to at least one of these letters. In addition, the file shows evidence of a meeting attended by appellant and a representative of BLM at which appellant urged that there be no development of trails or facilities until a definite need arises. Appellant further urged that the area remain open for hunting and mineral access.

In his statement of reasons on appeal, appellant maintains that less than half of the ORV trails within the district have been surveyed for possible archaeological sites. The designation notice of September 8, 1980, however, prohibits vehicle use during the period from May 16 to October 15 on all but six trails and roads. Appellant argues that it is not established that ORV use significantly damages archaeological sites. The proper course of action, in appellant's view, is to consider rerouting ORV trails around existing archaeological sites.

Appellant's statement of reasons on appeal is more an expression of disagreement with BLM's designation than a showing of error in BLM's action. The BLM designations were the result of considerable study begun in response to the allegation that increased use of ORV's posed a serious threat to archaeological sites in the district. BLM concluded in 1974 that off-road vehicle use was having no adverse effect upon the district, but that an increase in such use was likely to have an adverse effect if management of such vehicles were not intensified. 2/ In a subsequent Interim Cultural Resources Management Plan, BLM concluded that ORV's have a known detrimental effect on archaeological resources. In support of this conclusion, BLM referred to a 1976 survey report prepared under its supervision. 3/ On appeal, appellant offers comments which conflict with BLM's conclusion, but provides no substantive basis for modification or reversal.

1/ The Tangle Lakes Archaeological District is a 460,000-acre tract of land located west of Paxson, Alaska, on the Denali Highway. Approximately 200 archaeological sites have been identified in the district.

2/ Letter of Sept. 5, 1974, to Deputy Assistant Secretary, Fish and Wildlife and Parks from Director, Bureau of Land Management.

3/ Interim Cultural Resource Management Plan for the Tangle Lakes Archaeological District (Draft, Oct. 1979 at 10). See also Appendix 4, ibid., at 4-21 through 4-27.

[1] A factual situation similar to the case at hand existed in California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978). In that case, the appellants appealed from two decisions of the California State Director closing two corridors in the California desert to ORV use. In the area subject to the closure order were four endangered and one threatened species of plants. Closure was ordered by BLM, invoking the Endangered Species Act, 16 U.S.C. § 1531 (1976), and the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 (1976). Therein at 367-68, we said:

Where conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the result. Cf. Questa Petroleum Co., 33 IBLA 116 (1977); Rosita Trujillo, [20 IBLA 54 (1975)].

Appellant here has made no real effort to point out error in BLM's actions leading to closure. It is not enough on appeal to simply express disagreement with BLM's actions. The action of BLM required a considerable exercise of judgment in weighing competing interests and in devising what it regarded as a workable solution to the problem. While appellant's comments may have been useful to BLM during the period of public participation, they do not establish error on appeal.

Similar statements were voiced by this Board in Richard J. Leaumont, 54 IBLA 242 (1981). Therein, Leaumont protested BLM's decision not to recommend certain areas for further wilderness study. On appeal, Leaumont continued to take exception with BLM's findings, many of which involved the subjective determination of whether a wilderness inventory unit possessed outstanding opportunities for solitude. In response to appellant's arguments, we stated at 245:

These evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

In Leaumont, supra, the Board quoted a passage from Rosita Trujillo, 21 IBLA 289 (1975), for a proposition useful here:

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Rosita Trujillo, supra at 291.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

